

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

AMY GRAY,

Plaintiff,

vs.

STATE OF NEVADA,

Defendant.

Case No.: 2:13-cv-00834-GMN-VCF

ORDER

This matter is before the Court upon referral from the United States Court of Appeals for the Ninth Circuit (ECF No. 13), in order to determine whether in forma pauperis status should continue for *pro se* Plaintiff¹ Amy Gray's appeal or whether the appeal is frivolous or taken in bad faith. *See* 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith."); *see also Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) ("If at least one issue or claim is found to be non-frivolous, leave to proceed in forma pauperis on appeal must be granted for the case as a whole.").

In her Complaint, Plaintiff requests that this Court review her appeal of a matter originally before the State of Nevada District Court, Family Division, Clark County, Nevada, Case No. D-10-439962-R, in which Plaintiff's parental rights were terminated. (Compl., ECF Nos. 1-1, 8; *see also* Exhibits, ECF No. 3.) Plaintiff alleges that she requested the recusal of the state court judge presiding over the matter, and that her request was denied. (Compl., ECF Nos. 1-1, 8.) Plaintiff also alleges that the Nevada Supreme Court "denied" her appeal "due to

¹ Plaintiff incorrectly styled the case caption of her Complaint (ECF Nos. 1-1, 8), naming herself as "Defendant" and "State of Nevada" as "Plaintiff." However, because Plaintiff is representing herself *in propria persona*, the Court construes the parties so as to be consistent with the substance of Plaintiff's allegations.

1 filing fees.” (*Id.*) Plaintiff’s request for appellate review by this Court is apparently based upon
2 these two allegations, and Plaintiff names no other causes of action in her Complaint.

3 As explained in the Order and Report and Recommendation (ECF No. 4), this Court has
4 no jurisdiction to review an appeal of the state court decision named in Plaintiff’s Complaint.
5 “The United States District Court, as a court of original jurisdiction, has no authority to review
6 the final determinations of a state court in judicial proceedings.” *Worldwide Church of God v.*
7 *McNair*, 805 F.2d 888, 890 (9th Cir. 1986). Furthermore, “28 U.S.C. § 1257 provides that the
8 proper court in which to obtain such review is the United States Supreme Court.” *Id.*

9 “Although the federal district court may not exercise appellate jurisdiction over the
10 judgment of a state court, a district court does have jurisdiction over a ‘general’ constitutional
11 challenge that does not require review of a final state court decision in a particular case.” *Id.* at
12 891. “This distinction between a permissible general constitutional challenge and an
13 impermissible appeal of a state court determination may be subtle, and difficult to make.” *Id.*

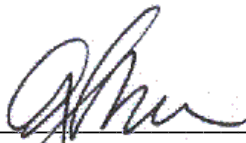
14 Here, the Court did not find that the Order and Report and Recommendation (ECF No.
15 4) was in error, and the Court agreed with the findings of the United States Magistrate Judge
16 that the jurisdictional deficiencies of Plaintiff’s Complaint could not be cured by amendment.
17 (Order, July 1, 2013, ECF No. 7.)

18 Also, the Court found that Plaintiff failed to file any objection. On June 20, 2013,
19 Plaintiff had filed a motion requesting an extension of time “to file a new complaint and start a
20 new civil case at least 120 days” (ECF No. 5) and a motion requesting transfer of her “appeal
21 filed on May 10, 2013 in U.S. District Court to Supreme Court because U.S. District doesn’t
22 have jurisdiction over Nevada Supreme Court or transfer to U.S. Federal Court Washington
23 D.C.” (ECF No. 6). However, neither of these requests appears to be an objection to the Order
24 and Report and Recommendation (ECF No. 4), although Plaintiff claims error on this basis (*see*
25 ///

1 Notice of Appeal, ECF No. 10).²

2 In the context of this litigation history, the Court finds that in forma pauperis status
3 should continue for Plaintiff's appeal, because Plaintiff has not shown bad faith, and Plaintiff
4 may have non-frivolous issues that may be brought on appeal.

5 **DATED** this 23rd day of July, 2013.

6
7 
8 _____
9 Gloria M. Navarro
10 United States District Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24

25 ² Furthermore, the Court appears to lack jurisdiction to grant either of Plaintiff's requests. And, to the extent that Plaintiff's request for an extension of time is actually a request for leave to amend, the Court's finding of futility because of lack of jurisdiction is applicable.